IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.778 OF 2006

Shri Sudhir Subhas Sinhasane & Ors. ... Petitioners

Vs.

State of Maharashtra & Anr. ... Respondents

Mr. Umesh Mankapure for the petitioners.

Ms. M.H. Mhatre, A.P.P. for the State.

CORAM : SMT. RANJANA DESAI, J.

DATED : 9TH NOVEMBER, 2006.

P.C. :-

1. In this petition filed under Articles 226 and 227 of the Constitution of India read with section 482 of the Code of Criminal Procedure (for short, "the Cr.P.C."), the petitioners have prayed for quashing of FIR in C.R. No.77 of 2006 lodged with Vishrambhag Police Station alleging offences punishable under sections 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short, "the said Act"), sections 323, 504, 506, 420, 477-A, 467, 468, 471, 147, 148 and 149 of the Indian Penal Code (for short, "the IPC") and section 7(1)(3) of the Protection of Civil Rights Act.

2. I have heard Mr. Mankapure, the learned counsel appearing for the petitioners, at great length. He submitted that the complaint filed against the petitioners makes out no offence and, therefore, it should be quashed. He drew my attention to section 3(1)(x) of the said Act. He submitted that a bare reading of this provision would indicate that this section requires that the accused must not be a member of a Scheduled Caste or a Scheduled Tribe and there must be intention to insult or intimidate with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. The learned counsel contended that if any of these ingredients is missing, the complaint alleging this offence must be quashed. The instant complaint does not state the caste of the accused. It does not state the caste of the complainant. This defect is fatal.

3. The learned counsel submitted that the instant complaint is totally malicious and is aimed at causing harassment to the petitioners. He pointed out that on 28/4/2004, the complainant became member of the Ganpati Peth Vyapari Nagari Sahakari Pat Sanstha (for convenience, “the said Sanstha”) of which petitioner 1 is the Founder and Chairman. Petitioners 2, 3 and 4 are the office bearers of the said Sanstha and petitioner 5 is the partner of petitioner 1 in some other business. The

learned counsel pointed out that on 13/10/2005, the complainant applied for loan. The loan was sanctioned on 18/10/2005 and the amount was transferred to the complainant. He withdrew it. On 5/1/2006, the first installment became due. However, the complainant did not pay the installment. Therefore, a letter was sent asking him to pay the installment. The complainant then gave a cheque in the sum of Rs.1,64,452/-. The said cheque was deposited for encashment on 13/2/2006. It was dishonoured on 14/2/2006. Thereafter, notice under section 138 of the Negotiable Instruments Act was issued on 21/2/2006. It was received by the complainant on 22/2/2006. Thereafter, proceedings under section 138 of the Negotiable Instruments Act were filed. Similarly, a complaint under section 91 of the Maharashtra Co-operative Societies Act, 1960 was also filed. Thereafter, on 25/3/2006 the instant complaint came to be filed alleging that on 5/9/2005 the alleged offence was committed. The learned counsel contended that the conduct of the complainant itself indicates that the complaint is frivolous and aimed at causing harassment to the petitioners.

4. Mr. Mankapure further submitted that the complaint suffers from laches. The enormous delay in filing the complaint must be taken into account and the complaint must be quashed on that ground.

5. The learned counsel then submitted that the first incident which is alleged against the complainant was not committed within public view. According to the complainant, only petitioner 1 - Sinhasane was present at that time. So far as the second occurrence is concerned that has also not taken place within public view as the other persons, who were present are also arraigned as the accused in the complaint.

6. He further submitted that in the facts which have been detailed hereinabove, it is apparent that the complaint is malicious and filed with the intention to humiliate or insult the petitioner and, hence, this court should quash the same in exercise of its inherent jurisdiction. The learned counsel referred to several judgments of this court in support of his submission. They are ***Bai @ Laxmibai w/o. Nivaratti Poul & Ors. v. The State of Maharashtra, 2001 ALL MR (Cri.) 219; Manohar M. Kulkar v. State of Maharashtra, 2005 Cri.L.J. 4653; Ashok Lakhaji Halmare v. State of Maharashtra & Anr., 2005 ALL MR (Cri.) 2489 and Gowardhan s/o. Rambhau Mohite v. State of Maharashtra, 2005 ALL MR (Cri.) 1223***.

7. In my opinion, it is not possible to quash this complaint in exercise of my inherent jurisdiction. Apart from offences under the said Act, in the complaint several other offences under the IPC are also alleged.

They are under sections 323, 504, 506, 420, 477-A, 467, 468, 471, 147, 148 and 149 of the IPC. The complaint runs into several pages and several facts have been narrated by the complainant. Merely on the ground of delay in approaching the court or on the ground that the complainant's cheque in repayment of the loan was dishonoured, it cannot be said, at this stage, that no offence at all can be said to have been committed. Undoubtedly, on the basis of the judgments of this court, prima facie, it appears that certain arguable points have been raised by the learned counsel for the petitioners so far as the offences under the said Act are concerned. However, it will not be possible at this stage to separate the said offences and quash them. There cannot be any such bifurcation of the fact at this stage. Ultimately, evidence will have to be led to find out whether this is an attempt to cause harassment to the petitioners or whether the allegations are genuine. Needless to say that ultimately if it is found that the complaint is totally frivolous and aimed at harassing the petitioners, the petitioners can also adopt such remedy as is available to them in law to vindicate their grievance as regards malicious prosecution. Needless to say that the concerned court will consider their case in accordance with law and grant relief if a case is made out. But, certainly no case is made out for quashing of the complaint. Petition is rejected. The stay of the proceedings is vacated.

[SMT. RANJANA DESAI, J.]